**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

**CRIMINAL WRIT PETITION NO. 1611 OF 2001**

Vinayak Ganpat Salve ..Petitioner

versus

Sau. Ujwala V. Salve & Anr. ..Respondents

Mr. A. C. Gawnekar for C.G. Gawnekar for the Petitioner.

**CORAM : D. G. DESHPANDE,J.**

**DATE : 1ST DECEMBER,2004.**

**P.C. :**

. Heard learned Advocate for the Petitioner. Nobody is present for the Respondent - wife though the matter is on board and was adjourned repeatedly.

. The question involved in this case was whether wife can file petition for enhancement of the maintenance under Section 127 of Cr.P.C. before J.M.F.C. Malegaon, when earlier application was filed by her before the Court at Nasik. Her earlier application was allowed and husband was directed to pay maintenance at Rs.500/= per month. Enhancement application was for increase in the maintenance

allowance from Rs.500/= to Rs.1,500/=. Objection was raised by the husband to the jurisdiction of the court. That objection was rejected.

. When the matter came up before me, it was because of the conflicting judgments the issue was referred to the Division Bench. The Division Bench by their order dated 6.5.2004 in paragraph 18 held that "as a pure question of law, "the Magistrate" contemplated by Section 127 of the Code is the Court of the Magistrate which had passed the order for maintenance under Section 125 of the Code".

. It will be therefore clear that in view of this decision, this petition is to be allowed, it is accordingly allowed. The impugned order is set aside. However, application of the wife for enhancement is sent to the J.M.F.C. Nasik for deciding afresh as per the provisions of law. This order be immediately communicated to both the courts below and if R & P are called, the same should be sent back to J.M.F.C. Nasik.

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